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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20040524

Application Number: 09/591,112
Filing Date: June 09, 2000
Appellant(s): HUTCHINS, JR., ROBERT H.

Robert H. Hutchins, Jr.
For Appellant

EXAMINER'S ANSWER

MAILED
MAY 27 2004
GROUP 3700

This is in response to the appeal brief filed 1/26/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 13-14 allowed.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

Issue item "A": "whether claims 18,23,25,26,28 and 33 are indefinite under 35 USC 1112, second paragraph" is moot in view of applicant's arguments on page 7-8 of appeal brief. **The rejection is withdrawn.**

Issue item "D": The rejection of claims 13 and 14 under 35 USC 103 (a) is withdrawn in view of applicant's arguments on page 10-11 of the appeal brief.

Claim 12 stands rejected under 35 USC 103 (a).

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-14,18-23,25,26,28,31-33 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

A substantially correct copy of appealed claims appears on page 16-22 of the Appendix to the appellant's brief. The minor errors are as follows: The rejection of claims 13,14 is withdrawn.

(9) *Prior Art of Record*

5,333,878	CALHOUN	8-1994
5,462,281	GAITO	10-1995
4,696,476	EPLETT	9-1987
6,279,907	HULLINGER	6,279,907
511,306	MOORE	12-1893
Des.349,521	Harris	8-1994
GB2229099A	BULBROOK	9-1990

(10) *Grounds of Rejection*

Claims 1,2,3,9,31 and 32 rejected under 35 U.S.C. 102 (b). This rejection is set forth in prior Office Action, Paper No. 15.

Claims 4-8,10-12,18-23,25,26,28,31-33 rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 15.

(11) *Response to Argument*

Response to issue “A”: In view of applicant’s arguments the rejection of claims is withdrawn and the **issue is moot**.

Response to issue “B”: **Applicant argues on page 8** that Calhoun spaces are not selectively positioned relative to one another to define a rectangular or non-rectangular array of playing spaces. **Arguments are not persuasive.** Applicant first of all is claiming “rectilinear or non-rectilinear” as opposed to “rectangular or non-rectangular” in the argument that is in error. Examiner takes the position that Calhoun board was made by selectively positioning to form a rectilinear array/non-rectilinear array as can be seen from Fig.1. If the applicant intends to claim independent segments that are “separately and removably positionable” to form different arrays on the board”, should so indicate in the claim.

Response to issue “C”: **Applicant argues on page 10** that merely stating a claimed feature as obvious is not sufficient. **Arguments are not persuasive.** Examiner takes the position that Bulbrook demonstrates a board with significantly improved aesthetics due to segments in different shapes. With regards to the cited reference demonstrating differently shaped segments in claim 4, for the purpose of records examiner is attaching

Bulbrook Fig.2A duly marked with sectional lines indicating a segment as seen in section A-A and a differently shaped section as seen in section B-B. Bulbrook segments in Fig.2A also teach structure as in applicant's claims 10 of top surface, bottom surface and two surfaces joined by middle portion. Bulbrook top surface is in a pattern that demonstrates an up and down (wave like) surface simulating a terrain as in applicant's claim 11.

Response to issue "D": **Applicant has not offered any specific arguments with respect to claim 12.** However Gaito clearly demonstrates three-dimensional segments (44) having an interior region (Fig.2) accessible from transparent surface (46).

The rejection of claims 13 and 14 under 35 USC 103 (a) is withdrawn in view of applicant's arguments on page 10-11 of the appeal brief.

Response to issue "E": **Applicant argues in page 11 that Epelett does not teach two 4X8 segments demonstrating motif that are not repeat or reverse repeat.** Arguments are not persuasive. **Examiner takes the position that sections 11,12,13 and 14 of Epelett can be connected in a way to result in two 4x8 sections. The non-repeat and non-reverse motif can also be achieved by rearranging the sections 11,12,13,14.** This can be demonstrated by attaching side 28d of section 11 against side 31b of section 14 to create a first 4x8 section and attaching side 28c of section 13 against side 31d of section 12 to create a second 4x8 section.

Response to issue "F": **Applicant argues on page 12 that Hullinger does not demonstrate graphic images, computer program for inputting three dimensional design parameters.**

Arguments are not persuasive. Hullinger clearly demonstrates at computer application for playing a game of chess (abstract) inherently suggesting at placing three-dimensional images on a computer screen. This would not have been possible without using computer logics and it's ability to input game parameters.

With regards to motivation the examiner takes the position that in the art area of games it is a common practice to play chess games on computer for making the game popular.

Response to issue "G": **Applicant argues on page 13** that Epelett teaches four sections as opposed to two in claim 21. Arguments are not persuasive. Examiner takes the position that sections 11,12,13 and 14 of Epelett can be connected in a way to result in two 4x8 sections. The non-repeat and non-reverse motif can also be achieved by rearranging the sections 11,12,13,14. This can be demonstrated by attaching side 28d of section 11 against side 31b of section 14 to create a first 4x8 section and attaching side 28c of section 13 against side 31d of section 12 to create a second 4x8 section.

Response to issue "H": **Applicant argues on page 14** that Epelett teaches four segments instead of three as in claim 28. **Examiner takes the position** that Epelette sections 11, 14 can be connected to each other to be used as a first section. This combined section (11+14) used with section 12 as second and section 13 as third section demonstrates the claimed configuration. Harris further demonstrates how three pieces are sloped inwardly.

For the above reasons, it is believed that the rejections should be sustained.

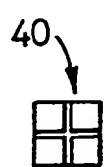
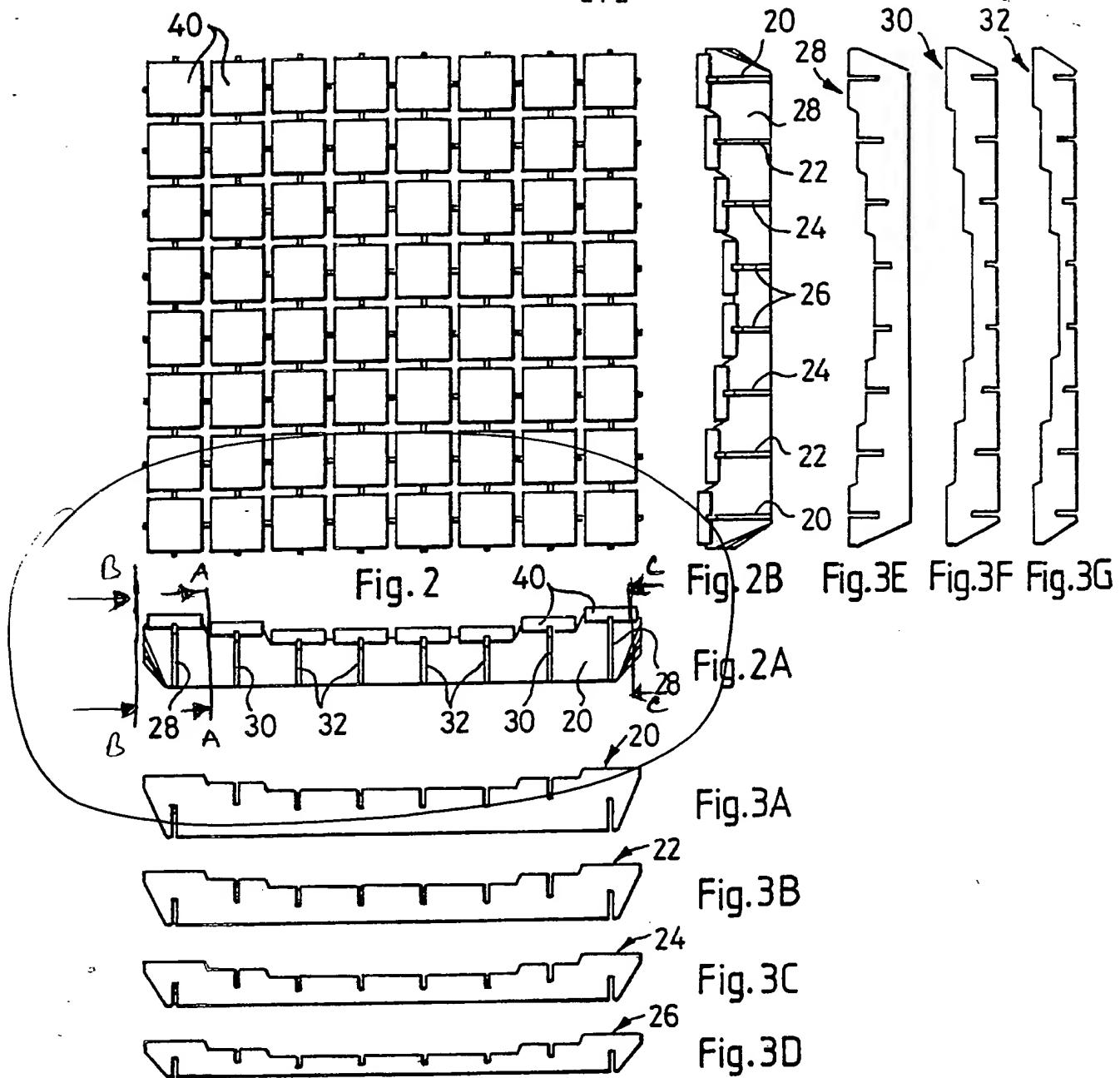


Fig. 4

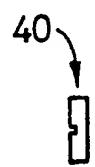


Fig. 4A

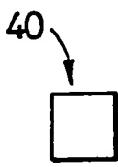
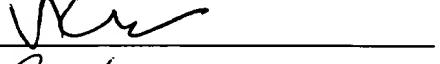


Fig. 4B

Respectfully submitted,

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Primary Examiner
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Derris Banks 
May 25, 2004

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